

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 90-16

Date issued: August 16, 1990

Requested by: Byron Knutson, North Dakota Commissioner of Labor

- QUESTION PRESENTED -

Whether a two year or a six year statute of limitations applies to a cause of action for the collection of wages when it includes claims for unpaid minimum wages, unpaid overtime compensation, liquidated damages, fees, damages, or penalties.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a two year statute of limitations applies to a cause of action for the collection of wages when it includes claims for unpaid minimum wages, unpaid overtime compensation, liquidated damages, fees, damages, or penalties and that a six year statute of limitations applies when the cause of action does not include those claims.

- ANALYSIS -

N. D. C. C. ' 34-01-13 provides that all suits and actions "for the recovery of overtime, damages, fees or penalties accruing under laws respecting the payment of wages, and specifically under the Act of Congress known as the Fair Labor Standards Act of 1938 . . . , and all other similar acts, must be brought within two years after the accrual of such claim for relief. . . ." This statute refers to the Fair Labor Standards Act of 1938, which is found at 29 U. S. C. A. ' 201 et seq. (1978 & Supp. 1980). 29 U. S. C. A. '255 provides that any action to enforce any cause of action for "unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, . . . the Walsh-Healey Act . . . or the Bacon-Davis Act . . . " may be commenced within two years after the cause of action has accrued. 29 U. S. C. A. '255 (1985).

The claims enforced through an action under the Fair Labor Standards Act are for minimum wages under 29 U. S. C. A. ' 206 (1978 & Supp. 1990), maximum hours under 29 U. S. C. A. ' 207 (1965 & Supp. 1990), and for certain penalties under 29 U. S. C. A. ' 216 (1965 & Supp. 1990). In North Dakota, N. D. C. C. ' 34-14-08 and 34-14-09 allow the North Dakota Commissioner of Labor to take assignments of wages from wage earners if the Commissioner deems those claims to be valid and enforceable in the courts. Additionally, N. D. C. C. ' 34-14-09.1 permits the recovery of interest on unpaid wages as well as damages in either double or triple the amount of unpaid wages depending on the employer's previous liabilities for wage claims.

The North Dakota Supreme Court has previously determined questions concerning the applicability of statutes of limitation when there is a conflict over which statute to apply. In In the Interest of W. M. V., 268 N. W. 2d 781 (N. D. 1978), the court stated that if there is a question of which statute of limitations applies, the longer term applies.

Furthermore, it is a general principal of statutory interpretation that the mention of one thing in the statute implies the exclusion of another. This rule applies unless there is some special reason for mentioning one thing and for not mentioning a second. In Re Township 143 North, Range 55 West, Cass County, 183 N.W.2d 520 (N.D. 1971); Juhl v. Well, 116 N.W.2d 625 (N.D. 1962).

Applying the above rules of statutory construction to the issue at hand, it is my opinion that in North Dakota causes of action concerning recovery of unpaid minimum wages, unpaid overtime compensation, liquidated damages, fees, damages, or penalties must be commenced within two years from the accrual of the cause of action.

For causes of action for the collection of wages not falling into the categories specified above, the North Dakota Supreme Court's stated preference for using a longer statute of limitations unless specifically provided otherwise would control. Consequently, the longer six year statute of limitations applicable to actions upon a contract or obligation under N.D.C.C. '28-01-16(1) would apply to wage claim actions which do not involve unpaid minimum wages, unpaid overtime compensation, liquidated damages, fees, damages, or penalties.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. '54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Nicholas J. Spaeth
Attorney General

Assisted by: Robert E. Lane
Assistant Attorney General

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